EXHIBIT A

UNITED STATES DISTRICT COURT
for EASTERN DISTRICT OF KENTUCKY
LONDON

UNITED STATES OF AMERICA

vs.

JAMES KNIGHT

Defendant

Docket No. 78-37

JUDGMENT AND PROBATION/COMMITMENT ORDER

(Filed March 21, 1980)

In the presence of the attorney for the government the defendant appeared in person on March 19, 1980.

COUNSEL:

☒ WITH COUNSEL: W. L. Rose and Gary Crabtree.

PLEA:

• • •

FINDING & JUDGMENT:

There being a verdict of ☒ GUILTY. Cts. 1, 9, 10, 11, 12, 13, 14, 15, 16 & 17

Defendant has been convicted as charged of the offense (s) of Conspiracy, in violation of Title 18, Section 371, United States Code; Fraud by wire, radio or television in violation of Title 18, Section 1343, United States Code; and Interstate transportation of falsely made & forged security, goods, wares, merchandise or money, in violation of Title 18, Section 2314, United States Code.

SENTENCE OR PROBATION ORDER:

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Count 1 – FIVE (5) YEARS – FINE – $10,000.00.

It is ADJUDGED that the imposition of sentence in Cts. 9 through 17 is suspended and the defendant is placed on probation for a period of FIVE (5) YEARS to begin upon his release from custody after service of the sentence imposed in Ct. 1.

Imprisonment on above sentence is stayed for a period of 14 days and the defendant may report directly to the institution designated by the Bureau of Prisons. During the period of stay of 14 days the defendant shall advise the Probation Office in London, Kentucky by telephone as to his whereabouts. His travel is restricted to States of Tennessee and Kentucky.

IT IS FURTHER ADJUDGED that the Sentences on Cts. 9 through 17 shall be consecutive to that imposed in Ct. 1 although the sentences on Cts. 9 through 17 are not imposed at this time.

SPECIAL CONDITIONS OF PROBATION:

SPEC. COND. OF PROB: Defendant shall pay $10,000.00 fine within first four years of his period of probation supervision.

Presentence report submitted to the Court before im-

position of sentence & copies furnished to counsel pursuant to Rule 32, F.R.C.P.

ADDITIONAL CONDITIONS OF PROBATION:

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION:

The court orders commitment to the custody of the Attorney General and recommends, That the defendant be committed to a minimum security institution.

SIGNED BY:

☒ U.S. District Judge

/s/ EUGENE E. SILER, JR.
Judge

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON

CRIMINAL No. 78-37
UNITED STATES OF AMERICA PLAINTIFF,

VS:

JAMES KNIGHT DEFENDANT.

MEMORANDUM

(Filed November 12, 1981)

This matter has come before the Court on remand from the United States Court of Appeals for the Sixth Circuit, with directions for this Court to determine whether an actual conflict of interest occurred at the trial between attorneys William L. Rose and Gary Crabtree and their client, James Knight, and, if so, whether there was any resulting prejudice because of it. After extensive hearings, this Court finds that there was no actual conflict of interest and, even if there were, no prejudice resulted as a consequence thereof.

Most of the factual background of this case is not disputed. James Knight consulted with and retained William L. Rose[1] as his attorney either before Knight was indicted

---

[1] Attorney William L. Rose is an attorney with over 40 years of practice, including one six-year term as a Kentucky circuit judge and one six-year term as the Commonwealth's Attorney.

or at a time shortly thereafter, for Rose represented Knight at the time of arraignment. The fee in the case was $20,000.00, $3,000.00 of which was later paid to Gary Crabtree[2] upon his entry into the case as defense counsel for Knight. Knight also paid Crabtree an additional $2,000.00 from his own pocket.

The trial in this case against Knight and several other codefendants was to begin on January 21, 1980. During the week before, Assistant U.S. Attorney Robert Trevey had a trial outline which had been prepared in the U.S. Attorney's Office and a transcript of testimony by a key witness, James R. Durham. Trevey took this with him when he went to the Laurel County Jail to interview Durham and apparently left both documents at the jail in a public room. On January 17, 1980, Trevey discovered that the outline and the transcript were missing and checked with the Jailer, but could find no trace of it. He originally thought that perhaps he had left them in the Federal Building at London, but, upon reflecting about the matter later, he felt that perhaps he had left these documents at the jail while he interviewed Durham. Because it was a matter involving a grand jury transcript, Trevely reported the matter to the Court either shortly before or shortly after the jury selection began, just as a matter of information that the transcript had disappeared.

Jury selection took place on January 21, 1980, with the trial to begin on January 28, 1980.

On the following date, January 22, 1980, when Deputy U.S. Marshals happened to be by the home of the defendant Eugene Alley, they saw what appeared to be a grand

---

[2] Attorney Gary Crabtree is also a highly experienced attorney with more than ten years of practice, including many major criminal cases in this Court.

jury transcript and reported this to Mr. Trevey. Trevey then went to the Alley home and found copies of his transcript and had arrest warrants issued by the Magistrate on January 23, 1980, against Mr. Alley and his wife for theft of government property.

The transcript and outline were apparently picked up at the jail by Attorney Crabtree when he was there seeing about another matter. When he spied these documents, he picked them up and showed them to Mr. Rose at a time before the trial. At that time, Crabtree had not been retained in the case, but he was retained shortly thereafter, because Attorney Rose felt that there was a need to have local counsel with office facilities and with a lot of experience in Federal Court. The transcripts were passed around through several hands after Mr. Crabtree got them, but apparently Attorney Rose did nothing more than look at the materials and give them to Attorney Fowler, representing Wayne Drewry, a codefendant.

On January 21, 1980, while Fowler had the document in his possession, he, Drewry and Knight were on their way home from court and stopped by Alley's office at Corbin. Alley there said he had some materials from depositions in civil cases involving the witness Durham and traded those materials for the copy of the grand jury transcript. It is unknown as to what ever happened to the trial outline.

On the night that Alley was arrested for possession of these papers, Rose called Knight and said that the papers should be done away with, because they could all get into trouble. Rose asked to speak with Fowler and after he did, Fowler told Drewry and Knight that the papers that they got would have to be destroyed. Fowler did destroy the papers that he had, perhaps the trial outline, and neither defense counsel nor the defendants at this point

apparently had any of the documents, for the copy of the grand jury transcript was seized from Alley.

Later, Mr. Rose told the rest of them that the material was a grand jury transcript and that they could all get charged with it and that the attorneys might lose their licenses.

On the day that the trial was to begin, January 28, 1980, the codefendants learned that Alley had been charged with the receipt of stolen government property. In the meantime, the U.S. Attorney was pursuing the investigation and turned the investigation of the disappearance of the documents over to Assistant U.S. Attorney Robert Houlihan, Jr., who was not involved in anyway in the case. The U.S. Attorney's office questioned the attorneys in the case, including Mr. Rose, all of whom initially denied having known anything about the transcript or the outline. Rose advised Knight to take the Fifth Amendment if asked anything about it.

At the time the trial began, on January 28, 1980, the Court was aware of the fact that a warrant had been issued and Alley had been arrested on the charge of the receipt of this stolen transcript and that the U.S. Attorney's office was questioning the attorneys in the case. The Court decided to proceed to trial on the indictment and to let the other matter involving the transcript be put aside until after the trial was completed. The case was over and the jury returned verdicts of guilty against each of the defendants on many of the counts on March 5, 1980. At that time, the Court asked the U.S. Attorney's office to make an investigation and file a report with the Court to see if there were any grounds for determination if there was any theft of government property or any potential contempt of court. Thereafter, interviews were held again with some of the attorneys, and Attorneys Rose and Crabtree then admitted how they obtained the documents.

A report involving all these interviews was turned over by Mr. Houlihan at the time of sentencing of the defendants in the case. At that time, Mr. Rose had the assistance of Attorney Lowell Lundy and Mr. Crabtree also had the assistance of Attorney Lundy and Attorney Larry Bryson. The Court took under advisement the question of whether there were any grounds to issue a show cause order and hold a contempt hearing. Later, an opinion was issued, determining there were no grounds for contempt or for further charges, and the matters against Alley and his wife were later dropped by the United States Attorney.

The issue involving the missing transcript and trial outline was not pursued during the time of the trial itself. However, the matter of the transcript was discussed several times between Knight and his attorney. Rose told Knight that he was going to meet with Trevey to straighten the matter out. Knight felt that Rose was very irritable with him during the trial and would not speak with him on occasions. However, Knight had no problems communicating with Crabtree at any time while the case was proceeding.

Knight did not take the stand in his own defense. This was the result of several conferences between Knight and his attorneys, who felt that it was best for him to rely upon testimony of Drewry and others. Knight was not the only defendant who did not testify.

Knight has very little education, and cannot read or write at a competent level. However, he has had several experiences in court before this one, including two felony convictions and another occasion when he testified as a witness in a homicide case. There is no evidence which Knight could have produced that was not introduced on his behalf in the trial. However, after the trial was over,

Rose and Crabtree advised Knight that they did not want to take the appeal, so Knight employed his present counsel, Honorable Robert Lotz, who had a potential conflict of interest, inasmuch as his law partner, William Oldfield, represented a codefendant, Robert Taylor, at trial, and another law partner, James Cobb, represented Alley at trial for awhile until he was fired in the middle of the trial. However, at the hearing, Mr. Knight waived any claims of conflict of interest between Lotz and Oldfield or Cobb. After the investigation involving the transcript had begun, at no time did either Rose or Crabtree tell Knight that he might want to get other counsel, nor did they offer Knight's information to the United States Attorney for a reduced charge on the indictment.

The claimed conflict here is that Mr. Rose and Mr. Crabtree were concerned about being charged themselves with contempt or the possession of stolen government property, so they were looking out for themselves. Even at the time of sentencing, for instance, the defendant Knight asserts that Rose and Crabtree felt that they might be inhibited in representing defendants in other matters in the Court before the contempt action was determined by the Court. Moreover, Knight claims that as he knew Crabtree and Rose got the transcript, he had something to offer in a "deal" with the United States Attorney, so Rose and Crabtree should have conveyed this to Mr. Trevey. Their failure to do so, says Knight, demonstrates an actual conflict of interest.

However, this does not produce an actual conflict. Admittedly, Mr. Rose and Mr. Crabtree were concerned about the other matter, but it appeared not to have affected their ability to represent Knight at any stage of the proceeding. The matter had to be passed by the Court, for under Rule 42, Federal Rules of Criminal Procedure,

summary disposition could not have been taken, inasmuch as the contempt was not done in the actual presence of the Court. Thus, any contempt proceeding had to be done upon notice under Rule 42(b), and was passed until the end of the trial, in order to expedite the trial itself. This is no different from any other case in which an attorney might commit some act which would be indirect contempt and could be raised at a time subsequent to the trial, nor is it any different from contempous conduct by the attorney himself in the presence of the Court, to be considered at the time of the conduct or after the trial is over.

Moreover, the failure of the attorneys to communicate an alleged "deal" with the U.S. Attorney was of little consequence. The prosecutor would have wanted all the facts, and he would have discovered that neither theft nor contempt was involved, thus demonstrating that Knight's information was of little value. In any event, the prosecutor could have gone ahead against Knight under the indictment, which was done, and then sought immunity regarding the transcript without giving up anything. All of this, of course, is pure speculation, but, if a new trial is granted for Knight, he clearly would not have anything to "deal" with at this stage of the proceedings.

The standard set out in this case by the Sixth Circuit is from *Wood* v. *Georgia,* 67 L.Ed.2d 221, 49 U.S.L.W. 4218 (1981), where the Court remanded the matter for a hearing on whether the conflict existed. In that case, the Court did not ask for a determination of any prejudice. In this case it did, perhaps following the language from other cases, such as *United States* v. *LaRiche,* 549 F.2d 1088 (6th Cir.) *cert. denied,* 430 U.S. 987 (1977). In that case, the Court held that the defendant must suffer actual prejudice in order to overturn a conviction. *Id.* at 1095. Neverthe-

less, it is not for this Court to determine the standard, but merely to make the findings as directed by the Sixth Circuit.

Therefore, the Clerk of this Court will transmit this Memorandum, along with the remainder of the file, back to the Sixth Circuit for further consideration of this case in line with the findings.

This 12 day of November, 1981.

/s/ EUGENE E. SILER, JR., Judge

EXHIBIT C

No. 80-5117
No. 80-5118
No. 80-5119

UNITED STATES COURT OF APPEALS

For The Sixth Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ROBERT "BOBBY" TAYLOR (80-5117),
JAMES KNIGHT (80-5118),
WAYNE DREWRY (80-5119),
Defendants-Appellants.

APPEAL from the United States District Court for the Eastern District of Kentucky.

Decided and Filed August 12, 1981

Before: EDWARDS, Chief Judge; LIVELY, Circuit Judge; and WISEMAN,* District Judge.

PER CURIAM. The defendants appeal from their jury convictions for conspiracy, fraud and interstate transportation of stolen property. The jury found that the defendants carried forward a conspiracy to defraud finance and leasing companies by four similar fraudulent schemes.

---

* The Honorable Thomas A. Wiseman, Judge, U.S. District Court for the Middle District of Tennessee, sitting by designation.

The case for the government was based largely on the testimony of two of the alleged conspirators, one of whom testified under a grant of immunity, and the other under a plea bargain by which the United States dropped all but one charge against him. Only one defendant-appellant, Wayne Drewry, challenges the sufficiency of the evidence. The court has examined the record and has determined that the evidence was sufficient to support a jury conviction of Drewry.

All defendants contend that the district court erred in admitting hearsay testimony of Durham under the co-conspirator exception to the hearsay rule. This argument boils down to a request that this court reverse its decision in *United States* v. *Vinson,* 606 F.2d 149 (6th Cir. 1979), *cert. denied,* 444 U.S. 1074 (1980). This court adheres to its decision in *United States* v. *Vinson* and holds that the district court did not err in the admission of Durham's testimony.

The defendants-appellants also contend that the district court erred in limiting cross-examination of Durham concerning similar past activities in which he engaged. The district court considered the objections to the limitation of cross-examination and concluded that the particular questions were inadmissible under Rule 608 of the Federal Rules of Evidence. The government points out that the jury already knew of Durham's prior conviction and knew that he was a prime mover in the illegal activities which were the subject of the trial and argues there was no abuse of discretion in holding that the particular evidence sought on cross-examination was inadmissible. In view of the extensive knowledge which the jury had about the witness' past activities, we find no abuse of discretion or prejudice to the defendants in the rulings complained of.

The defendants-appellants also contend that the district

court erred in its instructions on conspiracy. The court has examined the instructions and finds them to be correct.

The defendant Knight asserts that the record discloses a conflict of interest between him and his attorneys. The record does disclose that documents pertaining to this trial were taken from the United States Attorney's office prior to the trial and that an investigation of this disappearance was underway when the trial began. Among those questioned were the two attorneys who represented Knight. On appeal it is argued that these attorneys were aware that they were under investigation and were probably suspected of having had the purloined documents in their possession at some time prior to the beginning of the trial. Knowing this, appellate counsel argues, these attorneys may have pressed the defense of Knight's claim with less vigor than they would have if these circumstances had not existed. They point to the fact that Knight neither took the stand nor offered any evidence at the trial.

The recent Supreme Court decision in *Wood* v. *Georgia*, — U.S. —, 101 S. Ct. 1097, 1104 (1981), indicates that where a possibility of a conflict of interest on the part of counsel in a criminal case is sufficiently shown, a duty is imposed upon a trial court to inquire further. We believe there has been a sufficient showing of the possibility of a conflict in the present case to require such further injury.

We find no merit in any of the claims of error made on behalf of the defendants Taylor and Drewry and none in any other claim of error on behalf of the defendant Knight. Accordingly, the convictions of Taylor and Drewry are affirmed. We remand the appeal of Knight to the district court for the inquiry required by *Wood* v. *Georgia*. The district court will determine whether any actual conflict of interest existed and, if so, whether Knight was prejudiced thereby. The district court will transmit

a supplemental record to this court following conclusion of the proceedings on remand. Jurisdiction is retained to consider this issue further when the supplemental record is received.

EXHIBIT D

No. 80-5118

UNITED STATES COURT OF APPEALS
For The Sixth Circuit

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. JAMES KNIGHT, *Defendant-Appellant.*	APPEAL from the United States District Court for the Eastern District of Kentucky.

Decided and Filed June 22, 1982

Before: EDWARDS, Chief Judge; LIVELY, Circuit Judge; and WISEMAN,* District Judge.

PER CURIAM. Upon the original appeal by Knight from his conviction for conspiracy, fraud and interstate trans-

---

* The Honorable Thomas A. Wiseman, Judge, U.S. District Court for the Middle District of Tennessee, sitting by designation.

portation of stolen property, this court concluded there had been a sufficient showing of a conflict of interest on the part of Knight's trial counsel to require further inquiry. Following the procedure which the Supreme Court resorted to in *Wood* v. *Georgia*, 450 U.S. 261 (1981), we remanded Knight's case to the district court for a determination of whether any actual conflict existed and, if so, whether Knight was prejudiced thereby. *United States* v. *Taylor, et al.*, 80-5117-5119 (unpublished per curiam opinion filed August 12, 1981).

Following remand the district court held an evidentiary hearing at which Knight testified. Both of the attorneys who represented Knight during the criminal trial testified, as did the assistant United States attorney who represented the government throughout the trial. In addition, another assistant United States attorney who had investigated an allegation that copies of documents related to the trial had been stolen, was a witness at the hearing. Following this hearing the district court entered a memorandum in which he summarized the evidence concerning the missing documents. The district court concluded that neither of Knight's attorneys was involved in a theft of the documents and neither was in contempt of court because of any contact he may have had with the documents.

The district court concluded that there was no actual conflict between the two attorneys and their client James Knight, and that even if a conflict existed, no prejudice to Knight resulted therefrom. The court specifically found that the conduct of Knight's trial by his attorneys was unaffected by the knowledge that they, along with others, were under investigation in relation to the missing documents.

Upon review of the supplemental record and briefs of the parties, we find no error in the district court's deter-

mination. In *Cuyler* v. *Sullivan*, 446 U.S. 335, 350 (1980), the Supreme Court stated the test for finding a Sixth Amendment violation on the basis of an attorney's conflict of interest:

> We hold that the possibility of conflict is insufficient to impugn a criminal conviction. In order to demonstrate a violation of his Sixth Amendment rights, a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance.

The district court applied this test and found that the circumstances upon which the claim of a conflict was based did not affect the performance of the attorneys at the trial.

The judgment of conviction is affirmed.

EXHIBIT E

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[WITNESS: JAMES RANDALL DURHAM]

[53] Q. Was Mr. Alley present when you talked with Tony Lannum?

A. One time, I think.

Q. And did he at that time advise you that Padco was for sale?

A. He did.

Q. Did he tell you who the owners of Padco were?

A. He did.

Q. Who was that?

A. Mr. and Mrs. Aubrey Chesnut.

Q. What did he do after he learned who the owners of the company were?

A. He went and tried to purchase that company.

Q. Who did he talk with?

A. Mrs. Chesnut.

Q. After talking with her, did he later enter into any kind of a contract for a bill of sale?

A. I did.

MR. TREVEY: Your Honor, at this time, I would request the Marshal to give to defense counsel for inspection what has been premarked for identification purposes as Exhibit Number 2 and hand it to the witness.

[54] (Government's Exhibit 2, a bill of sale for equipment from Padco to Consolidated Coal Company, was shown to counsel.)

MR. ROSE: Your Honor, may we approach the bench?

THE COURT: All right.

(At the bench.)

MR. ROSE: Your Honor, it has been stated by this witness that at this point in time only he and Mr. Alley were engaged in a conspiracy of the buying and selling of Padco. Therefore, your Honor, we would respectfully object, or I guess my best shot is to task for an admonition so stating to the jury that these things that are done with Padco are not in furtherance of the– at this point, not in furtherance of the conspiracy as far as James Knight is concerned.

MR. TREVEY: I don't think that the jury should be admonished at this time. There has been no testimony as to whether James Knight is concerned. And until such time as he should come up and the Court make a finding that he is included in the conspiracy, I don't see how it is prejudicial to Knight in any way thus far. We have got to build a house one brick at a time.

MR. ROSE: Your Honor, he says– I mean Mr. Durham has now said when they asked who was there, Mr. Alley and me. Anybody else? And the answer was, No, sir, If I didn't make a mistake in writing that down. Now, this action to Padco is [55] between Gene Alley and him and Mr. and Mrs. Chesnut, he testifies. Now, he said some other one by the name of Tony Lannum. We must object to any part and request an admonition as to the other defendants other than those, since it does not appear to be in furtherance of the conspiracy. That is my opinion.

THE COURT: Well, the Court of Appeals in the Enwright Case and the–

MR. TREVEY: Thompson.

THE COURT: Thompson, I was going to say Vinson.

MR. TREVEY: Vinson and Thompson.

THE COURT: Has suggested that the jury not be admonished where we have statement made in furtherance of a conspiracy, that is alleged to be in furtherance of a conspiracy, but to wait until later and make a finding because otherwise these admonitions are confusing to the jury. And what you tell them is these statements are not admissible against those who weren't there unless you later find that there was a conspiracy with those defendants who weren't there and there was a conspiracy, then at a later time you can relate it back to them. That's too confusing so we will let it in on the condition that it was during the furtherance of the conspiracy, during the time of the conspiracy and in furtherance of the conspiracy. And if any person joins the conspiracy at a later time they are bound by the acts [56] and declarations of the conspirators at the outset.

MR. OLDFIELD: Your Honor, I think it's the *US versus James,* Fifth Circuit Case, which requires the United States to produce the proof and, Number 1, establish the

existence of the conspiracy prior to the time that they admit the hearsay. It's going to be a real problem. We are going to have a lot of conversations come in here before we have any conspiracy established.

THE COURT: I think the Sixth Circuit rejected that method in one of these cases, whether it is *Thompson* or *Vinson*.

MR. TREVEY: That's the same case.

THE COURT: O.K. I will overrule that. And I will let the US proceed.

MR. ROSE: All right. Now, I don't want to, your Honor, I don't want to interrupt the Court in any way along this same line. I would like— I guess then—

THE COURT: You want a continuing objection?

MR. ROSE: And then I will just wait. I want a continuing objection and then I will wait and move for an admonition, I guess later.

THE COURT: All right. You may have a continuing objection to any statement made out of the presence of your client by some other—

MR. OLDFIELD: Also, your Honor, I would like the same objection.

[57] THE COURT: That will apply for all defendants.

• • •